

NORMAN FILIP

IBLA 92-507

Decided September 24, 1992

Appeal from decisions of the California State Office, Bureau of Land Management, declaring abandoned and void certain unpatented mining claims for failure to file timely evidence of annual assessment work for the 1991 filing period. CAMC 138119 through 138124 and CAMC 30355.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold--Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold

In accordance with 43 CFR 3833.1-3, annual filings for mining claims must be accompanied by a nonrefundable service charge of \$5 for each claim. Annual filings received by BLM on or after Jan. 1, 1991, which are not accompanied by the proper service charges are, according to 43 CFR 3833.1-4(b), not to be accepted and are to be returned to the claimant/owner without further action. Thus, there can be no timely annual filing without the accompanying service charge and if the filing deadline passes without proper payment, the claims may be properly declared abandoned and void.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold--Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold

Where a mining claimant timely files evidence of annual assessment work for 15 claims, but only timely tenders sufficient service charges to cover the filing of 8 of those claims, and the record contains no evidence of how the service fee is to be applied, BLM shall require the claimant to select the 8 claims to which the money tendered should be applied. The remaining seven claims may be properly declared abandoned and void.

APPEARANCES: Norman Filip, Oakdale, California, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On December 24, 1991, Norman Filip filed with the California State Office, Bureau of Land Management (BLM), evidence of annual assessment work for 15 unpatented mining claims. However, he submitted only \$40 to cover the \$5 per claim annual service charge established by 43 CFR 3833.1-3(c). In a letter dated January 2, 1992, BLM informed Filip that it was returning the filings for seven claims (CAMC 138119 through CAMC 138124 and CAMC 30355) and that no action had been taken on those filings. It also advised him that the \$40 had covered the fees for the eight other claims. ^{1/} On January 6, 1992, Filip returned the annual filings for the seven claims along with a check for \$35.

On May 1, 1992, BLM issued a decision declaring unpatented mining claim CAMC 30355 abandoned and void for failure to timely file evidence of assessment work for the 1991 filing period. On May 12, 1992, it issued another decision declaring unpatented mining claims CAMC 138119 through 138124 abandoned and void for the same reason.

Thereafter, Filip filed a notice of appeal with BLM explaining that, in error, he had originally sent \$5 for each "page of claims" submitted instead of \$5 for each claim. He stated that he did not intentionally submit the wrong amount of money and that he corrected the error immediately upon notification.

Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1988), and Departmental regulation 43 CFR 3833.2-2 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year following the year in which the claim is located. Such filing must be made within each calendar year, i.e., on or after January 1 and on or before December 30. Ronald Willden, 97 IBLA 40 (1987); Robert C. LeFaivre, 95 IBLA 26 (1986). Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1988); 43 CFR 3833.4.

[1] The applicable regulation in this case, 43 CFR 3833.1-3, provides that annual filings "shall be accompanied by a nonrefundable service charge of \$5.00 for each mining claim, millsite, or tunnel site." Further, beginning January 1, 1991, "[f]ilings that are not accompanied by the proper service charges set forth in § 3833.1-3 of this title shall not be accepted and will be returned to the claimant/owner without further action." 43 CFR 3833.1-4(b). Based on those regulations, it is clear that there can be no timely annual filing without the accompanying service charge. Cf. Park

^{1/} The letter stated: "Only CAMC 30356, CAMC 30357, CAMC 65429, CAMC 65430, CAMC 65341, CAMC 65432, CAMC 106904, CAMC 131118 were updated for assessment year 1991."

City Chief Mining Co., 57 IBLA 346 (recordation of a mining claim required to be accompanied by a service fee and there could be no recordation without payment of the fee). Moreover, if the annual filing deadline passes without the filing of the service charge, BLM may properly declare the mining claims abandoned and void. Id.

[2] In this case, on December 24, 1991, Filip tendered a check for \$40 along with his annual filings for 15 claims. Subsequently, after the 1991 filing deadline, he submitted his check for \$35 to cover the balance of the service charges. The case record before the Board does not include any cover letter that may have accompanied that December 24, 1991, filing; therefore, we are unable to determine how BLM decided which of the 15 claims included in the filing were covered by the \$40 service charge and which annual filings would be returned to Filip. Although Filip does not claim that the \$40 submitted on December 24, 1991, was intended to cover the service charge for any of the claims involved in BLM's May 12, 1992, decision, it is clear that it is his hope that his January 6, 1992, payment of \$35 rectified any problem. It did not. Nevertheless, absent a cover letter indicating in what manner the service fee is to be applied, Filip should be free to choose the eight claims for which the timely service charge was submitted. Cf. Floyd Moody, 52 IBLA 153 (1981) (where claimant filed location notices for 24 claims and submitted fees to cover only 23, BLM was required to allow the claimant to select 23 claims to which the fees would apply and the other claim was properly declared abandoned and void).

Accordingly, we set aside the decisions appeal from and remand the case files to BLM. Upon their receipt, BLM should inform Filip that he may choose the 8 claims to which the \$40 payment should apply and BLM may properly declare the other seven claims abandoned and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case files are remanded for action consistent with this opinion.

Bruce Harris
Deputy Chief Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

